IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY , THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 9707 of 2005

Between:

M/s. S.V.E.C. Constructions LTd., 1014, Raghava Ratna

Tower, Chirag Ali Lane, Hyderabad, rep by Director
Sri. E. Ramesh Kumar

..... PETITIONER

AND

1 The Executive Engineer, A.P. Health and Medical Housing

Infrastructure Development Corporation Division
(APHMIDC) near Super Speciality Block, Govt General Hospital

Premises, Kurnool
2 The Regional Vigilance and Enforcement Officer,

Government of A.P., Ashok Nagar,Kurnool, Kurnool District
3 The Commercial Tax Officer-II, Nandyala, Kurnool District
4 The Commercial Tax Officer, Nampally Circle, Hotel Kakatiya

Building, Station Road, Nampally, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, Order or Direction, more particularly in the nature of Mandamus, declaring the action of the second Respondent in directing the first Respondent vide his proceedings in Rc. No. 296/C/2004, dt 30-10-2004 to deduct a further sum of Rs.3,27,997/- from the bills of the petitioner, as illegal and contrary to the provisions of the APGST Act and Rules, 1957, and consequently direct the first

Respondent to release the balance payments to the petitioner by deducting the tax at source only as per S.5-H of the A.P. General Sales Tax Act, 1957, R/w. Rules 17-I of the A.P. General Sales Tax Rules, 1957 or alternatively, in case the amount was already deducted and remitted to the Department, to direct the third and fourth Respondents to refund the same to the petitioner.

Counsel for the Petitioner:MR.G.NARENDRA CHETTY

Counsel for the Respondent No.1: MR. Y. SUDHAKAR.

Counsel for the Respondent Nos:2 to 4: SPECIAL GP FOR COMMERCIAL TAX

The Court made the following :

ORDER:

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of mandamus declaring the action of the second respondent-Regional Vigilance and Enforcement Officer in directing the first respondent vide his proceedings dated 30-10-2004 to deduct a further sum of Rs.3,27,997/- from the bills payable to the petitioner as illegal and contrary to the provisions of the Andhra Pradesh General Sales Tax Act and Rules, 1957 (for short' the Act and the Rules'). The petitioner also prays for issuance of a consequential direction directing the first respondent to release the balance payments to the petitioner by deducting the tax at source only as per Section 5-H of the Act r/w Rule 17-I of the Rules or alternatively to direct the third and fourth respondents to refund the amounts to the petitioner.

The petitioner is a registered dealer on the rolls of the fourth respondent doing business in works contract. The subject matter relates to the work awarded by the first respondent on 30-01-2004 for construction of residential school at Allagadda. The petitioner claims to have completed the work. The first respondent released the part payment by deducting tax at source under Section 5-H of the Act at the rate of 4% in accordance with the guidelines contained in Rule 17-I of the Rules. He accordingly issued the Tax Deduction Certificate to the petitioner. The petitioner claims that he is entitled to the payment of further substantial amounts by the first respondent for the work done by it.

The second respondent visited the premises under construction on 19-10-2004

and verified the records produced by the first respondent and upon perusal of the record passed the impugned order dated 30-10-2004 directing the first respondent to deduct a further sum of Rs.3,27,997/- from the bills of the petitioner and enclosed a statement revealing that the said amount was arrived at by him by applying the provisions of Section 5-F of the Act.

In this writ petition, the learned counsel for the petitioner Sri G. Narendra Chetty, *inter alia,* submits that the second respondent has no jurisdiction whatsoever to issue such directions. It is submitted that the second respondent is not the assessing authority and the assessment of the tax under Section 5-H of the Act, if at all, could have been done only by the fourth respondent-Commercial Tax Officer, being the assessing authority, so far as the petitioner is concerned. It is submitted that the first respondent is not under any legal obligation to oblige and comply with the directions of the second respondent.

We find substantial force in the submission made by the learned counsel for the petitioner. We find it difficult to appreciate as to how the second respondent could have passed the impugned order, which is in the nature of practically an assessment order, which could have been passed only by the fourth respondent in his capacity as the assessing authority in exercise of his statutory powers conferred upon him under the provisions of the said Act and the Rules.

The averments made in the counter-affidavit filed by the fourth respondent had clearly reveal that so far no assessment order under the provisions of the Act has been passed by the fourth respondent in his capacity as the assessing authority. It is thus clear that as at present there is no further liability as such on the part of the petitioner to pay any amount and more particularly the specified amount as directed to be deducted vide the impugned proceedings of the second respondent. In our considered opinion, the second respondent ought not to have passed the impugned order in such a manner directing the first respondent to deduct further amounts in the absence of any assessment order passed by the competent authority. The impugned order passed by the second respondent is accordingly set aside.

The further question that falls for our consideration is as to the relief to be granted to the petitioner. The petitioner seeks refund of the amount. From the

averments made in the counter-affidavit filed by the second respondent it is clear that the first respondent having recovered the balance amount in terms of the directions issued by the second respondent, remitted the same to the account of the commercial tax department by way of challans on 11-01-2005 and 07-04-2005 respectively. In such view of the matter, it may not be appropriate to issue any directions as such directing the respondents to return the amount to the petitioner. Interests of justice would be met by directing the fourth respondent to complete the assessment and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of the order and accordingly give credit to the amounts already deducted and deposited into the account of the department. This aspect of giving credit shall ultimately depend upon the order of the assessing authority. There shall be an order accordingly.

The writ petition is accordingly disposed of without any order as to costs.

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B. SUDERSHAN REDDY,J

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RAMESH RANGANATHAN,J

08-06-2005

NOTE:

Furnish the Certified Copy by 13-06-2005.

(B/o)

sj/msv

To

1 The Executive Engineer, A.P. Health and Medical Housing

Infrastructure Development Corporation Division
(APHMIDC) near Super Speciality Block, Govt General Hospital

Premises, Kurnool
2 The Regional Vigilance and Enforcement Officer,

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5 Two C.D. copies.